

HOUSE BILL 260

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2004 Regular Session
4lr0209
CF 4lr0482

By: **Delegates Frush, Bobo, Bronrott, Conroy, Gaines, Goldwater, Gutierrez, Madaleno, Mandel, Menes, Murray, Nathan-Pulliam, Parker, Petzold, Barkley, Benson, Boutin, Brown, Haynes, Heller, Hubbard, Kelley, Moe, Montgomery, Morhaim, Patterson, Proctor, Stern, V. Turner, and Vaughn**

Introduced and read first time: January 23, 2004
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Clean Indoor Air Act of 2004**

3 FOR the purpose of prohibiting a person from smoking tobacco products except under
4 certain circumstances; authorizing certain counties to regulate smoking under
5 certain circumstances; repealing certain provisions of law concerning tobacco
6 smoking in retail stores; declaring the intent of the General Assembly; stating
7 the purpose of certain provisions of this Act; prohibiting a person from smoking
8 in indoor areas open to the public except under certain circumstances; requiring
9 the posting of certain signs; requiring the Department of Health and Mental
10 Hygiene to adopt certain regulations; requiring the Department to report to the
11 General Assembly regarding certain provisions of this Act; establishing certain
12 penalties for certain violations of this Act; prohibiting smoking in certain places
13 of employment; requiring the Department of Labor, Licensing, and Regulation to
14 adopt certain regulations; requiring the Department to report to the General
15 Assembly regarding the Department's enforcement efforts and the effect of the
16 efforts; establishing certain penalties for certain violations in certain places of
17 employment; defining certain terms; declaring that nothing in this Act shall be
18 construed to preempt a certain entity from enacting and enforcing certain
19 measures; and generally relating to the prohibition of smoking in indoor areas
20 open to the public and indoor places of employment.

21 BY repealing and reenacting, with amendments,
22 Article 25 - County Commissioners
23 Section 3(jj) and 236B
24 Annotated Code of Maryland
25 (2001 Replacement Volume and 2003 Supplement)

26 BY repealing
27 Article - Business Regulation
28 Section 2-105(d)

1 Annotated Code of Maryland
2 (1998 Replacement Volume and 2003 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Health - General
5 Section 24-205
6 Annotated Code of Maryland
7 (2000 Replacement Volume and 2003 Supplement)

8 BY repealing
9 Article - Health - General
10 Section 24-501 through 24-505, inclusive, and the subtitle "Subtitle 5. Tobacco
11 Smoking in Retail Stores"
12 Annotated Code of Maryland
13 (2000 Replacement Volume and 2003 Supplement)

14 BY adding to
15 Article - Health - General
16 Section 24-501 through 24-509, inclusive, to be under the new subtitle "Subtitle
17 5. Clean Indoor Air Act"
18 Annotated Code of Maryland
19 (2000 Replacement Volume and 2003 Supplement)

20 BY repealing
21 Article - Labor and Employment
22 Section 2-106(c) and 5-314(c)
23 Annotated Code of Maryland
24 (1999 Replacement Volume and 2003 Supplement)

25 BY repealing and reenacting, without amendments,
26 Article - Labor and Employment
27 Section 5-101(a), (c), (d), and (g)
28 Annotated Code of Maryland
29 (1999 Replacement Volume and 2003 Supplement)

30 BY adding to
31 Article - Labor and Employment
32 Section 5-608
33 Annotated Code of Maryland
34 (1999 Replacement Volume and 2003 Supplement)

35 BY renumbering
36 Article - Labor and Employment
37 Section 2-106(d) and (e), respectively

1 to be Section 2-106(c) and (d), respectively
 2 Annotated Code of Maryland
 3 (1999 Replacement Volume and 2003 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article 25 - County Commissioners**

7 3.

8 (jj) The County Commissioners of Frederick County may ADOPT
 9 REGULATIONS OR ENACT LAWS THAT ARE AT LEAST AS STRINGENT AS THE
 10 PROVISIONS OF SUBTITLE 5, TITLE 24 OF THE HEALTH - GENERAL ARTICLE TO
 11 regulate the smoking of tobacco products [by designating smoking and no smoking
 12 areas] in public buildings owned, controlled, or financed by the State of Maryland in
 13 Frederick County.

14 236B.

15 The County Commissioners for Washington County may enact ordinances
 16 [regulating] THAT ARE AT LEAST AS STRINGENT AS THE PROVISIONS OF SUBTITLE 5,
 17 TITLE 24 OF THE HEALTH - GENERAL ARTICLE TO REGULATE smoking in county
 18 offices and county office buildings. [Any ordinance enacted shall assure and provide
 19 for employees and the public to smoke in designated smoking places.]

20 **Article - Business Regulation**

21 2-105.

22 [(d) (1) (i) Notwithstanding any regulations adopted by the Secretary
 23 under this section, the smoking of tobacco products is permitted in any of the
 24 following locations unless restricted as authorized under paragraph (3) of this
 25 subsection:

26 1. any portion of a private residence which is not open to the
 27 public for business purposes;

28 2. any establishment that:

29 A. is not a restaurant or hotel as defined in Article 2B, §
 30 1-102 of the Code;

31 B. possesses an alcoholic beverages license issued under
 32 Article 2B of the Code that allows consumption of alcoholic beverages on the premises
 33 of the establishment; and

34 C. is generally recognized as a bar or tavern;

35 3. a bar in a hotel or motel;

1 (2) Cigarette;

2 (3) Pipe; or

3 (4) Other tobacco product of any kind.

4 (b) Every director of a nursing home, health clinic, or physician's office shall
5 make and carry out a plan that adequately protects the health of nonsmoking
6 patients by regulating the smoking of tobacco products on the premises.

7 (c) (1) An individual may not smoke in any area of a hospital.

8 (2) The hospital director shall provide for the posting and placement of
9 conspicuous signs that clearly indicate that smoking is not permitted in the hospital.

10 (d) (1) [This] NOTWITHSTANDING THE PROVISIONS OF § 24-504 OF THIS
11 TITLE, THIS section does not apply to patients who are:

12 (i) In a facility for the treatment of mental disorders as defined in
13 § 10-101(e) of this article;

14 (ii) In a facility where the average patient stay is more than 30
15 days; or

16 (iii) In an acute care hospital and the attending physician
17 authorizes smoking, in writing, as part of the care for the patient.

18 (2) Smoking permitted under this section shall be in designated areas
19 that are considered safe and provide nonsmoking patients, family members, and
20 employees protection from tobacco smoke.

21 (3) Smoking may not be permitted where nonsmoking patients sleep.

22 [Subtitle 5. Tobacco Smoking in Retail Stores.]

23 [24-501.

24 (a) In this subtitle the following words have the meanings indicated.

25 (b) "Public area" means a room or a portion of a room or other area to which
26 the public has ready access.

27 (c) "Retail store" means any establishment employing 20 or more full-time
28 persons whose primary purpose is to sell to consumers any goods, wares, food for
29 consumption off the premises, or merchandise.

30 (d) "Smoking" means the act of smoking or carrying a burning:

31 (1) Cigar;

32 (2) Cigarette;

1 (3) Pipe; or

2 (4) Other tobacco product of any kind.

3 (e) "Supervisor" means the person who controls, governs, or directs the
4 activities in a retail store.]

5 [24-502.

6 (a) The provisions of this subtitle do not apply to:

7 (1) A restaurant;

8 (2) A restaurant area of a retail store;

9 (3) A tobacconist;

10 (4) A lavatory or restroom in a retail store; or

11 (5) A work area of a retail store:

12 (i) To which the public does not have access; and

13 (ii) That can be physically isolated by a room with doors closed.

14 (b) Except as provided in this subtitle, an individual or employee may not
15 smoke in the public area of a retail store in this State.]

16 [24-503.

17 (a) A supervisor shall provide for the posting and placement of conspicuous
18 signs that clearly indicate that smoking is not permitted in the public area of a retail
19 store.

20 (b) A supervisor violates this subtitle if the supervisor fails to comply with the
21 provision of subsection (a) of this section.

22 (c) A supervisor does not violate this section if:

23 (1) The supervisor complies with the provision of subsection (a) of this
24 section; and

25 (2) The public or employees persist in or continue their smoking in a
26 public area.]

27 [24-504.

28 (a) The Secretary shall adopt rules and regulations to enforce the provisions of
29 this subtitle.

1 (b) A person who violates § 24-503(a) of this subtitle is subject to a civil
2 penalty of \$25.]

3 [24-505.

4 (a) Except as provided in subsection (b) of this section, this subtitle does not
5 prohibit any county or municipal corporation of the State from enacting an ordinance,
6 resolution, law, or rule that is more stringent than the provisions of this subtitle.

7 (b) Charles County and St. Mary's County may not enact an ordinance,
8 resolution, law, or rule that is more stringent than the provisions of this subtitle.]

9 SUBTITLE 5. CLEAN INDOOR AIR ACT.

10 24-501.

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 (B) "EMPLOYEE" HAS THE MEANING STATED IN § 5-101 OF THE LABOR AND
14 EMPLOYMENT ARTICLE.

15 (C) "EMPLOYER" HAS THE MEANING STATED IN § 5-101 OF THE LABOR AND
16 EMPLOYMENT ARTICLE.

17 (D) "ENVIRONMENTAL TOBACCO SMOKE" MEANS THE COMPLEX MIXTURE
18 FORMED FROM THE ESCAPING SMOKE OF A BURNING TOBACCO PRODUCT OR SMOKE
19 EXHALED BY THE SMOKER.

20 (E) "INDOOR AREA OPEN TO THE PUBLIC" MEANS AN INDOOR AREA, OR A
21 PORTION OF AN INDOOR AREA, ACCESSIBLE TO THE PUBLIC BY EITHER INVITATION
22 OR PERMISSION.

23 (F) "PLACE OF EMPLOYMENT" HAS THE MEANING STATED IN § 5-101 OF THE
24 LABOR AND EMPLOYMENT ARTICLE.

25 (G) "SMOKING" MEANS THE BURNING OF A LIGHTED CIGARETTE, CIGAR, PIPE,
26 OR ANY OTHER MATTER OR SUBSTANCE THAT CONTAINS TOBACCO.

27 24-502.

28 IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE STATE PROTECT THE
29 PUBLIC AND EMPLOYEES FROM INVOLUNTARY EXPOSURE TO ENVIRONMENTAL
30 TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC, INDOOR PLACES OF
31 EMPLOYMENT, AND CERTAIN DESIGNATED PRIVATE AREAS.

1 24-503.

2 THE PURPOSE OF THIS SUBTITLE IS TO PRESERVE AND IMPROVE THE HEALTH,
3 COMFORT, AND ENVIRONMENT OF THE PEOPLE OF THE STATE BY LIMITING
4 EXPOSURE TO ENVIRONMENTAL TOBACCO SMOKE.

5 24-504.

6 EXCEPT AS PROVIDED IN § 24-505 OF THIS SUBTITLE, A PERSON MAY NOT
7 SMOKE IN:

8 (1) AN INDOOR AREA OPEN TO THE PUBLIC;

9 (2) AN INDOOR PLACE IN WHICH MEETINGS ARE OPEN TO THE PUBLIC
10 IN ACCORDANCE WITH TITLE 10, SUBTITLE 5 OF THE STATE GOVERNMENT ARTICLE;

11 (3) A GOVERNMENT OWNED OR OPERATED MEANS OF MASS
12 TRANSPORTATION INCLUDING BUSES, VANS, TRAINS, TAXICABS, AND LIMOUSINES;
13 OR

14 (4) AN INDOOR PLACE OF EMPLOYMENT.

15 24-505.

16 THIS SUBTITLE DOES NOT APPLY TO:

17 (1) PRIVATE HOMES, RESIDENCES, INCLUDING RESIDENCES USED AS A
18 BUSINESS OR PLACE OF EMPLOYMENT, AND AUTOMOBILES, UNLESS BEING USED
19 FOR CHILD CARE, DAY CARE, THE PUBLIC TRANSPORTATION OF CHILDREN, OR AS
20 PART OF HEALTH CARE OR DAY CARE TRANSPORTATION;

21 (2) A HOTEL OR MOTEL ROOM RENTED TO ONE OR MORE GUESTS AS
22 LONG AS THE TOTAL PERCENTAGE OF HOTEL OR MOTEL ROOMS BEING SO USED
23 DOES NOT EXCEED 25%; OR

24 (3) AN INDOOR AREA BEING USED FOR THE PURPOSE OF A THEATRICAL
25 PERFORMANCE, A MUSICAL CONCERT, OR THE PRODUCTION OF A FILM IF
26 ENVIRONMENTAL TOBACCO SMOKE IS A PART OF THE PERFORMANCE, CONCERT, OR
27 FILM.

28 24-506.

29 (A) (1) SIGNS THAT STATE "SMOKING PERMITTED IN THIS ROOM" SHALL BE
30 PROMINENTLY POSTED AND PROPERLY MAINTAINED WHERE SMOKING IS ALLOWED
31 UNDER § 24-505(2) OF THIS SUBTITLE.

32 (2) SIGNS THAT STATE "WARNING: SMOKING OCCURS AS PART OF THIS
33 PRODUCTION" SHALL BE PROMINENTLY POSTED AND PROPERLY MAINTAINED
34 WHERE SMOKING IS ALLOWED UNDER § 24-505(3) OF THIS SUBTITLE.

1 (B) THE SIGNS SHALL BE POSTED AND MAINTAINED BY THE OWNER,
2 OPERATOR, MANAGER, OR OTHER PERSON HAVING CONTROL OF THE AREA.

3 (C) THE LETTERS ON THE SIGNS SHALL BE AT LEAST 1 INCH IN HEIGHT.

4 24-507.

5 (A) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT PROHIBIT
6 ENVIRONMENTAL TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC OTHER
7 THAN INDOOR PLACES OF EMPLOYMENT.

8 (B) ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, THE DEPARTMENT SHALL
9 REPORT TO THE GENERAL ASSEMBLY ON:

10 (1) THE ENFORCEMENT EFFORTS OF THE DEPARTMENT TO ELIMINATE
11 ENVIRONMENTAL TOBACCO SMOKE IN INDOOR AREAS OPEN TO THE PUBLIC FOR
12 THE PRIOR YEAR; AND

13 (2) THE RESULTS OF THESE ENFORCEMENT EFFORTS.

14 24-508.

15 (A) A PERSON OR EMPLOYER WHO VIOLATES A PROVISION OF THIS SUBTITLE
16 OR A REGULATION ADOPTED UNDER THIS SUBTITLE SHALL BE CONSIDERED IN
17 VIOLATION OF THIS SUBTITLE AND SHALL BE SUBJECT TO A CIVIL PENALTY OF \$100
18 FOR THE FIRST VIOLATION AND AT LEAST \$250 FOR EACH SUBSEQUENT VIOLATION.

19 (B) AN EMPLOYER WHO DISCHARGES OR DISCRIMINATES AGAINST AN
20 EMPLOYEE BECAUSE THAT EMPLOYEE HAS MADE A COMPLAINT, HAS GIVEN
21 INFORMATION TO THE DEPARTMENT IN ACCORDANCE WITH THIS SUBTITLE, HAS
22 CAUSED TO BE INSTITUTED OR IS ABOUT TO CAUSE TO BE INSTITUTED A
23 PROCEEDING UNDER THIS SUBTITLE, OR HAS TESTIFIED OR IS ABOUT TO TESTIFY IN
24 A PROCEEDING UNDER THIS SUBTITLE, SHALL BE DEEMED IN VIOLATION OF THIS
25 SUBTITLE AND SHALL BE SUBJECT TO A CIVIL PENALTY OF AT LEAST \$2,000 BUT NOT
26 MORE THAN \$10,000 FOR EACH VIOLATION.

27 24-509.

28 THIS SUBTITLE MAY BE CITED AS THE CLEAN INDOOR AIR ACT.

29 **Article - Labor and Employment**

30 2-106.

31 [(c) (1) (i) Notwithstanding any regulations adopted by the Commissioner
32 under this section, the smoking of tobacco products is permitted in any of the
33 following locations unless restricted as authorized under paragraph (3) of this
34 subsection:

- 1 any portion of a private residence which is not open to the
2 public for business purposes;
- 3 2. any establishment that:
 - 4 A. is not a restaurant or hotel as defined in Article 2B, §
5 1-102 of the Code;
 - 6 B. possesses an alcoholic beverages license issued under
7 Article 2B of the Code that allows consumption of alcoholic beverages on the premises
8 of the establishment; and
 - 9 C. is generally recognized as a bar or tavern;
- 10 3. a bar in a hotel or motel;
- 11 4. a club as defined in Article 2B, § 1-102 of the Code that
12 possesses an alcoholic beverages license issued under Article 2B of the Code and that
13 allows consumption of alcoholic beverages on the premises of the club;
- 14 5. in the case of a restaurant as defined in Article 2B, §
15 1-102 of the Code:
 - 16 A. if the restaurant does not possess an alcoholic beverages
17 license issued under Article 2B of the Code, a separate enclosed room not to exceed
18 40% of the total area of the restaurant; or
 - 19 B. if the restaurant possesses an alcoholic beverages license
20 issued under Article 2B of the Code, a bar or bar area, a separate enclosed room not
21 exceeding 40% of the restaurant, or a combination of a bar or bar area and a separate
22 enclosed room not exceeding 40% of the total area of the restaurant including the bar
23 or bar area;
- 24 6. up to 40% of the sleeping rooms in a hotel or motel;
- 25 7. a separate enclosed room of an establishment other than
26 an establishment specified in items 1 through 6 of this subparagraph that possesses
27 an alcoholic beverages license issued under Article 2B of the Code that allows
28 consumption of alcoholic beverages on the premises of the establishment; or
- 29 8. up to 40% of the premises of a fraternal, religious,
30 patriotic, or charitable organization or corporation or fire company or rescue squad
31 that is subject to the authority of the Secretary during an event that the organization
32 or corporation holds on its own property and which is open to the public.
- 33 (ii) A separate enclosed room in which smoking is permitted under
34 subparagraph (i) of this paragraph is not required to have a specially modified
35 ventilation system for the room.

1 (2) For the purposes of paragraph (1)(i)5B of this subsection, "bar or bar
2 area" means an area within a restaurant that is devoted to the serving of alcoholic
3 beverages for consumption by guests on the premises and in which the serving of food
4 is incidental to the consumption of the alcoholic beverages, and the immediately
5 adjacent seating area.

6 (3) Notwithstanding the provisions of this subsection, a proprietor of an
7 establishment described in paragraph (1) of this subsection may restrict or prohibit
8 smoking on the premises of the establishment.]

9 5-101.

10 (a) In this title the following words have the meanings indicated.

11 (c) (1) "Employee" means, except as provided in § 5-401 of this title, an
12 individual whom an employer employs, for a wage or other compensation, in the
13 business of the employer.

14 (2) "Employee" includes:

15 (i) an individual whom a governmental unit employs;

16 (ii) an individual who is licensed as a taxicab driver and leases or
17 rents a taxicab from a person who operates or owns a taxicab business in Baltimore
18 City;

19 (iii) an individual who is employed for part-time or temporary help
20 by a governmental unit or person who engages in a business that directly employs
21 individuals to provide part-time or temporary help to another governmental unit or
22 person; and

23 (iv) an individual who performs work for a governmental unit or
24 person to whom the individual is provided by another governmental unit or person
25 who engages in a business that directly employs individuals to provide part-time or
26 temporary help.

27 (d) (1) "Employer" means:

28 (i) except as provided in § 5-401 of this title, a person who is
29 engaged in commerce, industry, trade, or other business in the State and employs at
30 least 1 employee in that business; or

31 (ii) a public body.

32 (2) "Employer" includes:

33 (i) a person who operates or owns a taxicab business in Baltimore
34 City and leases or rents a taxicab to a licensed taxicab driver, to provide services to
35 the public;

1 (ii) a governmental unit or person who engages in a business that
2 directly employs individuals to provide part-time or temporary help to another
3 governmental unit or person; and

4 (iii) a governmental unit or person who contracts directly with
5 another governmental unit or person who engages in a business that directly employs
6 individuals to provide part-time or temporary help to another governmental unit or
7 person.

8 (g) "Place of employment" means a place in or about which an employee is
9 allowed to work.

10 5-314.

11 [(c) (1) (i) Notwithstanding any regulations adopted by the Commissioner
12 under this section, the smoking of tobacco products is permitted in any of the
13 following locations unless restricted as authorized under paragraph (3) of this
14 subsection:

15 1. any portion of a private residence which is not open to the
16 public for business purposes;

17 2. any establishment that:

18 A. is not a restaurant or hotel as defined in Article 2B, §
19 1-102 of the Code;

20 B. possesses an alcoholic beverages license issued under
21 Article 2B of the Code that allows consumption of alcoholic beverages on the premises
22 of the establishment; and

23 C. is generally recognized as a bar or tavern;

24 3. a bar in a hotel or motel;

25 4. a club as defined in Article 2B, § 1-102 of the Code that
26 possesses an alcoholic beverages license issued under Article 2B of the Code and that
27 allows consumption of alcoholic beverages on the premises of the club;

28 5. in the case of a restaurant as defined in Article 2B, §
29 1-102 of the Code:

30 A. if the restaurant does not possess an alcoholic beverages
31 license issued under Article 2B of the Code, a separate enclosed room not to exceed
32 40% of the total area of the restaurant; or

33 B. if the restaurant possesses an alcoholic beverages license
34 issued under Article 2B of the Code, a bar or bar area, a separate enclosed room not
35 exceeding 40% of the restaurant, or a combination of a bar or bar area and a separate

1 THIS SECTION, HAS CAUSED TO BE INSTITUTED OR IS ABOUT TO CAUSE TO BE
2 INSTITUTED A PROCEEDING UNDER THIS SECTION, OR HAS TESTIFIED OR IS ABOUT
3 TO TESTIFY IN A PROCEEDING, SHALL BE DEEMED IN VIOLATION OF THIS SECTION
4 AND SHALL BE SUBJECT TO A CIVIL PENALTY OF AT LEAST \$2,000 BUT NOT MORE
5 THAN \$10,000 FOR EACH VIOLATION.

6 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 2-106(d) and
7 (e), respectively, of Article - Labor and Employment of the Annotated Code of
8 Maryland be renumbered to be Section(s) 2-106(c) and (d), respectively.

9 SECTION 3. AND BE IT FURTHER ENACTED, That nothing in this Act shall
10 be construed to preempt a county or municipal government from enacting and
11 enforcing more stringent measures to reduce involuntary exposure to environmental
12 tobacco smoke.

13 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take
14 effect October 1, 2004.